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**BEFORE THE
RESPIRATORY CARE BOARD
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Petition to Revoke Probation
Against:

Case No. R-2015

MIKA K. SHERMAN
4722 Saratoga Avenue
San Diego, CA 92107

**PETITION TO REVOKE
PROBATION**

Respiratory Care Practitioner
License No. 21980

Respondent.

Complainant alleges:

PARTIES

1. Stephanie Nunez (Complainant) brings this Petition to Revoke Probation solely in her official capacity as the Executive Officer of the Respiratory Care Board of California, Department of Consumer Affairs.

2. On or about July 31, 2001, the Respiratory Care Board issued Respiratory Care Practitioner License No. 21980 to MIKA K. SHERMAN (Respondent). The Respiratory Care Practitioner License was in effect at all times relevant to the charges brought herein and will expire on September 30, 2006, unless renewed.

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3. In a disciplinary action entitled "In the Matter of Petition to Revoke Probation Against Mika K. Sherman," Case No. R-1916, the Respiratory Care Board, issued a decision, effective August 26, 2005, in which Respondent's Respiratory Care Practitioner License No. 21980 was revoked. However, the revocation was stayed and Respondent's license was placed on probation for a period of three (3) years with certain terms and conditions. A copy of that decision is attached as Exhibit A and is incorporated by reference.

JURISDICTION

4. This Petition to Revoke Probation is brought before the Respiratory Care Board (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

5. Section 3710 of the Code states, in pertinent part: “The Respiratory Care Board of California, hereafter referred to as the board, shall enforce and administer this chapter [Chapter 8.3, the Respiratory Care Practice Act].”

6. Section 3718 of the Code states: “The board shall issue, deny, suspend, and revoke licenses to practice respiratory care as provided in this chapter.”

COST RECOVERY

7. Section 3753.5, subdivision (a) of the Code states, in pertinent part:

"In any order issued in resolution of a disciplinary proceeding before the board, the board or the administrative law judge may direct any practitioner or applicant found to have committed a violation or violations of law to pay to the board a sum not to exceed the costs of the investigation and prosecution of the case. . . ."

8. Section 3753.7 of the Code states:

"For purposes of the Respiratory Care Practice Act, costs of prosecution shall include attorney general or other prosecuting attorney fees, expert witness fees, and other administrative, filing, and service fees."

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1 9. Section 3753.1 of the Code states, in pertinent part:
2 "(a) An administrative disciplinary decision imposing terms of probation may include,
3 among other things, a requirement that the licensee-probationer pay the monetary costs associated with
4 monitoring the probation. . . ."

5 **FIRST CAUSE TO REVOKE PROBATION**

6 (Probation Monitoring Program)

7 10. At all times after the effective date of Respondent's probation, Condition 7
8 stated:

9 "Respondent shall comply with requirements of the Board appointed
10 probation monitoring program, and shall, upon reasonable request, report to or
11 appear to a local venue as directed.

12 "Respondent shall claim all certified mail issued by the Board, respond to
13 all notices of reasonable requests timely, and submit Annual Reports, Identification
14 Update reports or other reports similar in nature, as requested and directed by the
15 Board or its representative.

16 "Respondent is encouraged to contact the Board's Probation Program at any
17 time she has a question or concern regarding her terms and conditions of probation.

18 "Failure to appear for any scheduled meeting or examination, or cooperate
19 with the requirements of the program, including timely submission of requested
20 information, shall constitute a violation of probation and will result in the filing of
21 an accusation and/or a petition to revoke probation against Respondent's respiratory
22 care practitioner license."

23 11. Respondent's probation is subject to revocation because she failed to
24 comply with Probation Condition 7, referenced above. The facts and circumstances regarding this
25 violation are as follows:

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28 A. On or about August 18, 2005, the Board mailed a letter to

1 Respondent by certified and regular mail regarding the terms and conditions of her
2 probation and requested forms to be completed and submitted to the Board by a
3 specific date. To date, Respondent failed to comply with the Board's request and
4 failed to submit the requested forms.

5 B. On or about September 7, 2005, the Board directed Respondent to
6 report to the Department of Consumer Affairs, Division of Investigation, on
7 September 15, 2005, to discuss the terms and conditions of her probation. In fact,
8 on August 31, 2005, Respondent spoke to probation monitor K.M. stating she was
9 available to meet with him on September 15, 2005 to discuss the terms and
10 conditions of probation. Respondent failed to appear for the scheduled meeting as
11 requested.

12 C. On or about September 22, 2005, the Board mailed a final letter to
13 Respondent directing her to contact the Board no later than September 30, 2005,
14 with her intentions whether she was going to comply with her probation order. To
15 date, Respondent has failed to comply with the Board's direction and failed to
16 notify the Board of her intentions.

17 **SECOND CAUSE TO REVOKE PROBATION**

18 (Probation Monitoring Costs)

19 12. At all times after the effective date of Respondent's probation, Condition 8
20 stated:

21 "All costs incurred for probation monitoring during the entire probation
22 shall be paid by the Respondent. The monthly cost may be adjusted as expenses
23 are reduced or increased. Respondent's failure to comply with all terms and
24 conditions may also cause this amount to be increased.

25 "All payments for costs are to be sent directly to the Respiratory Care
26 Board and must be received by the date(s) specified. (Periods of tolling will not toll
27 the probation monitoring costs incurred.)

28 "If Respondent is unable to submit costs for any month, she shall be

1 required instead to submit an explanation of why she is unable to submit the costs,
2 and the date(s) she will be able to submit the costs including payment amount(s).
3 Supporting documentation and evidence of why the Respondent is unable to make
4 such payment(s) must accompany this submission.

5 “Respondent understands that failure to submit costs timely is a violation of
6 probation and submission of evidence demonstrating financial hardship does not
7 preclude the Board from pursuing further disciplinary action. However, Respondent
8 understands providing evidence and supporting documentation of financial
9 hardship may delay further disciplinary action.

10 “In addition to any other disciplinary action taken by the Board, an
11 unrestricted license will not be issued at the end of the probationary period and the
12 respiratory care practitioner license will not be renewed, until such time all
13 probation monitoring costs have been paid.

14 “The filing of bankruptcy by Respondent shall not relieve the Respondent
15 of her responsibility to reimburse the Board for costs incurred.”

16 13. Respondent’s probation is subject to revocation because she failed to
17 comply with Probation Condition 8, referenced above. The facts and circumstances regarding this
18 violation are as follows: Respondent failed to pay her \$100 monthly probation costs due
19 September 26, 2005, October 26, 2005, November 26, 2005, December 26, 2005, and January 26,
20 2006, and is in arrears in the amount of \$500.

21 **THIRD CAUSE TO REVOKE PROBATION**

22 (Cost Recovery)

23 14. At all times after the effective date of Respondent’s probation, Condition 12
24 stated:

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28 “Respondent shall pay to the Board a sum not to exceed the costs of the

1 investigation and prosecution in this case. That sum shall be \$384.50 and shall be
2 paid in fully directly to the Board, in equal quarterly payments, within 12 months
3 from the effective date of this decision. Cost recovery will not be tolled.

4 “If Respondent is unable to submit costs timely, she shall be required
5 instead to submit an explanation of why she is unable to submit these costs in part
6 or in entirety, and the date(s) she will be able to submit the costs including payment
7 amount(s). Supporting documentation and evidence of why the Respondent is
8 unable to make such payment(s) must accompany this submission.

9 “Respondent understands that failure to submit costs timely is a violation of
10 probation, and submission of evidence demonstrating financial hardship does not
11 preclude the Board from pursuing further disciplinary action. However,
12 Respondent understands that providing evidence and supporting documentation of
13 financial hardship may delay further disciplinary action.

14 “Consideration to financial hardship will not be given should Respondent
15 violate this term and condition, unless an unexpected AND avoidable hardship is
16 established from the date of this order to the date payment(s) is due.

17 “The filing of bankruptcy by the Respondent shall not relieve the
18 Respondent of her responsibility to reimburse the Board for these costs.”

19 15. Respondent’s probation is subject to revocation because she failed to
20 comply with Probation Condition 12, referenced above. The facts and circumstances regarding
21 this violation are as follows: Respondent failed to pay her \$96.13 quarterly cost recovery payment
22 due to the Board on November 26, 2005 and is in arrears.

23 **PRAYER**

24 WHEREFORE, Complainant requests that a hearing be held on the matters herein
25 alleged, and that following the hearing, the Respiratory Care Board issue a decision:

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28 1. Revoking the probation that was granted by the Respiratory Care Board of

1 California in Case No. R-1916 and imposing the disciplinary order that was stayed thereby
2 revoking Respiratory Care Practitioner License No. 21980 issued to MIKA K. SHERMAN;

3 2. Revoking or suspending Respiratory Care Practitioner License No. 21980,
4 issued to MIKA K. SHERMAN.;

5 3. Ordering Mika K. Sherman to pay the Respiratory Care Board the costs of
6 the investigation and enforcement of this case, and if probation is continued or extended, the costs
7 of probation monitoring;

8 4. Taking such other and further action as deemed necessary and proper.

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10 DATED: March 2, 2006

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13 Original signed by Liane Zimmerman for:
14 STEPHANIE NÚÑEZ
15 Executive Officer
16 Respiratory Care Board of California
17 Department of Consumer Affairs
18 State of California
19 Complainant
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